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VIA CERTIFIED MAIL
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Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave., NW
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Re: Proposed Rule – U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigrant Benefit Request Requirements, DHS Docket No. USCIS-2019-0010, RIN 1615-AC18, 84 Fed. Reg. 62,280 (Nov. 14, 2019); 84 Fed. Reg. 67,243 (Dec. 9, 2019)

Dear Ms. Deshommes:

The Immigrant Legal Resource Center (ILRC) submits this supplemental comment on the Proposal,¹ which would substantially raise fees and functionally price the most vulnerable immigrant populations out of important immigration benefits and services. Through this supplemental comment letter, ILRC follows up on its previous comments² to offer further reasons it strongly opposes the Proposal and believes that it continues to be arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act (APA).

On March 1, 2020, the United States District Court for the District of Columbia determined that Acting USCIS Director Kenneth Cuccinelli had been unlawfully designated to serve as Acting Director in violation of the Federal Vacancies Reform Act (FVRA). As a result,

¹ The Proposal collectively refers to the rule issued by the U.S. Citizenship and Immigration Service (USCIS), U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Service Fee Schedule and Changes to Certain Other Immigrant Benefit Request Requirements, DHS Docket No. USCIS-2019-0010, RIN 1615-AC18, 84 Fed. Reg. 62,280 (Nov. 14, 2019) and to 84 Fed. Reg. 67,243 (Dec. 9, 2019).

² Immigrant Legal Resource Center, Comment Letter on U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigrant Benefit Request Requirements (Dec. 23, 2019) (<https://www.regulations.gov/document?D=USCIS-2019-0010-7084>); Immigrant Legal Resource Center, Supplemental Comment Letter on U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigrant Benefit Request Requirements (Feb. 10, 2020) (<https://www.regulations.gov/document?D=USCIS-2019-0010-12014>).



the court invalidated two USCIS policies adopted by Mr. Cuccinelli regarding scheduling credible fear interviews during expedited removal proceedings. *See L.M.-M. v. Cuccinelli*, No. CV 19-2676 (RDM), 2020 WL 985376 (D.D.C. Mar. 1, 2020). Those policies reduced the time afforded to asylum seekers to consult with others in advance of their credible fear interviews and prohibited asylum officers from granting extensions to prepare for those interviews, “except in the most extraordinary of circumstances.” *Id.* at *2 (internal quotation marks omitted). Because Mr. Cuccinelli was unlawfully designated to serve as Acting Director in violation of the FVRA, the court found that the policies Mr. Cuccinelli instituted were invalid both under the FVRA and under the APA as “directives [that] were not issued ‘in accordance with law.’” *Id.* at *23.

Because the Proposal was issued by Mr. Cuccinelli, it too must be set aside. If USCIS wishes to go forward with a version of the Proposal, then it must be re-proposed by a USCIS Director or Acting Director who is lawfully in office and authorized to act on behalf of the agency at the time of re-proposal.³ Failure to do so renders the Proposal, and any final rule issued as a result, invalid under the FVRA and contrary to law under the APA, in addition to the legal flaws in the Proposal explained in ILRC’s prior comments.

Respectfully,

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³ *Cf. NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014) (setting aside decisions of the NLRB where a majority of the board members were improperly appointed pursuant to the Appointments Clause).